

**COMMISSION IMPLEMENTING REGULATION (EU) 2017/980****of 7 June 2017****laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities in accordance with Directive 2014/65/EU of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU <sup>(1)</sup>, and in particular Articles 80(4) and 81(4) thereof,

Whereas:

- (1) Directive 2014/65/EU sets out obligations for the cooperation and exchange of information between competent authorities. As part of that procedure, a competent authority may request the cooperation of the competent authority of another Member State for an on-the-spot verification or in an investigation.
- (2) In order to ensure that competent authorities are able to cooperate and exchange information in an efficient and timely manner for the purposes of Directive 2014/65/EU and provide each other full mutual assistance, it is appropriate to lay down procedures as well as templates and forms to be used by competent authorities for such cooperation and exchanges of information, including for the submission of requests for cooperation or exchange of information, acknowledgements of receipt and replies to such requests.
- (3) To ensure that requested authorities process requests for cooperation or information efficiently and expeditiously, each request should clearly set out the reason for the request for cooperation or exchange of information. Beyond the use of templates and forms for requests for cooperation or requests for information and replies to such requests, the procedures for cooperation and exchange of information should allow and facilitate the communication, consultation and interaction between the requesting authority and the requested authority, throughout the process.
- (4) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (5) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Directive 2014/65/EU apply from the same date.
- (6) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority ('ESMA') to the Commission.
- (7) ESMA did not conduct open public consultations on the draft implementing technical standards on which this Regulation is based, nor did it analyse the potential related costs and benefits of introducing the standard forms, templates and procedures to be used by the relevant competent authorities, as this would have been disproportionate in relation to the scope and impact of those standards, taking into account that their addressees would only be the national competent authorities of the Member States and not market participants.
- (8) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(2)</sup>,

<sup>(1)</sup> OJ L 173, 12.6.2014, p. 349.

<sup>(2)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

HAS ADOPTED THIS REGULATION:

*Article 1*

**Contact points**

1. Competent authorities shall designate contact points for the communication of requests for cooperation or for exchange of information pursuant to Articles 80 and 81 of Directive 2014/65/EU respectively. They shall publish the details of the contact points on their websites.
2. The competent authorities shall communicate the details of their contact points to ESMA. ESMA shall maintain and update a list of the contact points designated in accordance with paragraph 1, for the use of the competent authorities.

*Article 2*

**Request for cooperation or exchange of information**

1. A requesting authority shall make a request for cooperation or exchange of information in paper form or by electronic means, using the form set out in Annex I. It shall address the request to the contact point of the requested authority.
2. In urgent cases, the requesting authority may make the request for cooperation or exchange of information verbally provided that subsequent confirmation of the request is made in writing within a reasonable timeframe, unless the requested authority agrees otherwise.
3. The requesting authority may attach to the request any document or supporting material deemed necessary to support the request.

*Article 3*

**Acknowledgement of receipt**

Within 10 working days of receipt of the request for cooperation or exchange of information by the contact point of the requested authority, that authority shall send an acknowledgement of receipt to the requesting authority, using the form set out in Annex II.

*Article 4*

**Reply to a request for cooperation or exchange of information**

1. The requested authority shall respond to a request for cooperation or exchange of information in paper form or by electronic means, using the form set out in Annex III. Unless otherwise specified by the requesting authority, the reply shall be addressed to the contact point of the requesting authority.
2. The requested authority shall execute requests for cooperation or exchange of information in a manner which ensures any necessary regulatory action shall proceed without undue delay, taking into account the complexity of the request and the necessity to involve third parties or another authority.

*Article 5*

**Procedures for sending and processing a request for cooperation or exchange of information**

1. The requesting authority and the requested authority shall communicate in relation to the request for cooperation or exchange of information either in paper form or electronically, depending on which of the two is the most expeditious, and taking due account of confidentiality considerations, correspondence times, the volume of material to be communicated and the ease of access to the information by the requesting authority. In particular, the requesting authority shall respond promptly to any clarifications asked by the requested authority.
2. The requested authority shall notify the requesting authority where it anticipates a delay of more than 5 working days beyond the estimated date of response specified in the acknowledgement of receipt.

3. Where the request has been qualified by the requesting authority as urgent, the requested authority and the requesting authority shall agree on the frequency with which the requested authority will update the requesting authority on its handling of the request and on the date when it expects to provide a response.

4. The requested authority and the requesting authority shall cooperate to resolve any difficulties that may arise in executing a request.

#### Article 6

##### **Procedure for requests for taking a statement from a person**

1. If the requesting authority includes within its request the taking of a statement of any person, the requested authority and the requesting authority shall, subject to existing legal limitations or constraints and any differences in procedural requirements, assess and take into account:

- (a) the rights of the person or persons from which the statements are to be taken;
- (b) the role of the staff of the requested authority and of the requesting authority in the taking of the statement;
- (c) whether the person from whom the statement is to be taken has the right to be assisted by a legal representative and, if so, the scope of the representative's assistance during the taking of the statement, including in relation to any records or report of the statement;
- (d) whether the statement is to be taken on a voluntary or compelled basis where that distinction exists;
- (e) whether, based on the information that is available at the time of the request, the person from which the statement is to be taken is a witness or subject of investigation;
- (f) whether, based on the information that is available at the time of the request, the statement could be, or is intended to be used in criminal proceedings;
- (g) the admissibility of the statement in the requesting authority's jurisdiction;
- (h) the recording of the statement and the applicable procedures, including whether it will be contemporaneous or summarised written minutes or an audio or audiovisual recording;
- (i) procedures on the certification or confirmation of the statement by the persons providing the statement, including whether that takes place after the statement is taken.

2. The requested authority and the requesting authority shall ensure that arrangements are in place for their staff to proceed efficiently, including arrangements to enable their staff to agree on any additional information that may be necessary, including the following:

- (a) planning of dates;
- (b) the list of questions to be asked of the person from which the statement is to be taken and its review;
- (c) travelling arrangements, including ensuring that the requested authority and the requesting authority are able to meet to discuss the matter prior to the taking of the statement;
- (d) translation arrangements.

#### Article 7

##### **Procedure for requests for an on-site verification or investigation**

1. Where there is a request for carrying out an on-site verification or investigation, the requesting authority and the requested authority shall consult each other on the best way to give useful effect to the request for cooperation taking into account points (a), (b) and (c) of Article 80(1) of Directive 2014/65/EU, including on the merits of conducting a joint on-site verification or joint investigation.

In deciding on the best way to give useful effect to the request for cooperation, the requesting authority and the requested authority shall take into account at least the following:

- (a) the contents of any request for cooperation received from the requesting authority, including any suggestion on the appropriateness to carry out the investigation or on-site verification jointly;
- (b) whether they are separately conducting their own inquiries into a matter with cross-border implications and whether that matter would be more suitably dealt with by joint collaboration;

- (c) the legal and regulatory framework in each of their jurisdictions, ensuring that both authorities have a good understanding of the potential constraints and legal limitations on their conduct and on any proceedings that may follow, including any issues relating to the principle of *ne bis in idem*;
  - (d) the management and direction needed for the investigation or on-site inspection;
  - (e) the allocation of resources and appointment of staff in charge of carrying out investigation or on-site inspections;
  - (f) the possibility to establish a joint action plan and timings of work by each authority;
  - (g) the determination of actions to be taken, jointly or individually, by each authority;
  - (h) mutual sharing of information gathered and reporting on the outcomes of the individual actions taken;
  - (i) other case specific issues.
2. Where the requested authority carries out the verification or investigation itself, it shall keep the requesting authority informed of the progress of these activities and shall deliver its findings in good time.
3. Where the requesting authority and the requested authority decide to carry out a joint investigation or joint on-site verification, they shall:
- (a) engage in ongoing dialogue to coordinate the information gathering process and the finding of facts;
  - (b) work closely and cooperate with each other when conducting the joint investigation or joint on-site inspection;
  - (c) identify the specific legal provisions that form the subject matter of the investigation or on-site inspection;
  - (d) where relevant, agree upon at least the following:
    - (i) the drawing up of a joint action plan specifying the substance, nature and timing of the actions to be taken, including the allocation of responsibilities in delivering the outcome of the work and taking into account each authority's respective priorities;
    - (ii) the identification and assessment of any legal limitations or constraints and any differences in procedures with respect to investigative or enforcement action or any other proceedings, including the rights of any person subject to investigation;
    - (iii) the identification and assessment of specific legal professional privileges that may have an impact on the investigation proceedings as well as the enforcement proceedings, including self-incrimination;
    - (iv) the public and press strategy;
    - (v) the intended use of information exchanged.

#### Article 8

#### Unsolicited exchanges of information

1. Where a competent authority has information that it believes would assist another competent authority for the purposes of carrying out its duties under Directive 2014/65/EU or Regulation (EU) No 600/2014 of the European Parliament and of the Council <sup>(1)</sup>, it shall transmit that information in paper form or by electronic means to the contact point of the other competent authority.
2. By way of derogation from paragraph 1, if the competent authority sending the information believes the information should be sent urgently, it may initially communicate the information verbally provided that subsequent transmission of information is made in writing within a reasonable timeframe, unless the authority receiving the information agrees otherwise.
3. An authority that sends information on an unsolicited basis shall do so using the form set out in Annex III, identifying in particular issues relating to the confidentiality of information.

<sup>(1)</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

*Article 9***Requirement to notify competent authorities**

1. Where, pursuant to Article 80(1) of Directive 2014/65/EU, a competent authority of a regulated market directly addresses investment firms that are remote members or participants of the regulated market, it shall inform the competent authority of the home Member State of the remote member or participant, in paper form or by electronic means, using the form set out in Annex IV to this Regulation, immediately after it has contacted the remote member or participant, unless the authority of the home Member State of the remote member or participant has previously agreed in writing to be informed by other means of communication.
2. If the reason for addressing the remote member or participant of the regulated market is urgent, the competent authority of the regulated market may for justified reasons, make the notification verbally provided that subsequent confirmation of the request is made in writing within a reasonable timeframe, unless the requested authority agrees otherwise.

*Article 10***Entry into force and application**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 3 January 2018.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 June 2017.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX I

**Form for a request for cooperation or exchange of information**

Request for cooperation or exchange of information

Reference number: .....

Date: .....

**General information**

FROM:

Member State:

Requesting Authority:

Address:

(Contact details of the contact point)

Name:

Telephone:

Email:

TO:

Member State:

Requested Authority:

Address:

(Contact details of the contact point)

Name:

Telephone:

Email:

Dear [insert appropriate name]

In accordance with Article(s) [80/81 <sup>(1)</sup>] of Directive 2014/65/EU your input is sought in relation to the matter(s) set out in further detail below.

I would be grateful to receive a response to the above request by [*insert indicative date for the reply and in case of an urgent request insert deadline for the information to be provided by*] or, if that is not possible, for an indication as to when you anticipate being in a position to provide the assistance which is sought.

<sup>(1)</sup> Please insert relevant Article of Directive 2014/65/EU.

**Type of request**

Please tick the appropriate box(es)

- Supervisory Activities (provision of information, taking of a statement, other)
- Investigation
- On-site verification

**Reasons for the request**

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*[insert provision(s) of the sectoral legislation under which the requesting authority is competent to deal with the matter]*

The request concerns cooperation or exchange of information on

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*[insert description of the subject matter of the request, the purpose for which the cooperation or exchange of information is sought, facts underlying the investigation which form the basis of the request and explanation for its helpfulness]*

Further to .....

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.....

*[if applicable, insert details of the previous request in order to enable it to be identified]*

**Supervisory Activities (provision of information, taking of a statement)**

(a) Please provide a detailed description of the specific information sought with reasons why that information will be of assistance and, if known, a list of the persons considered possessing the information sought or the places where such information may be obtained.

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(b) If the request concerns information relating to a transaction or order in a specific financial instrument, please provide the following information.

Product ID: .....

*[insert precise description of the financial instrument, including the ISIN code]*

Person ID: .....

*[insert the identity of any person connected with the transaction or order, including a person dealing in the financial instrument or on whose behalf the dealing is considered to have taken place]*

Dates: .....

*[insert the dates between which transactions or orders in those financial instruments took place including in the case of a significant period of time, reasons why the entirety of the time period is beneficial]*

(c) If the request concerns information relating to the business or activities of a person, please provide information as precise as possible to enable that person to be identified.

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(d) If there are special considerations on the sensitivity of the information sought, please provide an indication of the sensitivity of the information contained in the request and any special precautions that have to be taken in collecting the information due to investigatory considerations.

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(e) Please provide any additional information.

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*[Whether the requesting authority has been or will be in contact with any other authority or law enforcement agency in our Member State in relation to the subject matter of the request or any other authority which the requesting authority is aware that has an active interest in the subject matter of the request]*

(f) In case of an urgent request and the setting of any deadlines, please provide full explanation of the urgency of the request and an explanation of any deadlines that the requesting authority has asked for the information to be provided by.

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**Taking of a statement**

Please indicate:

(a) Statement under: oath /affirmation



(b) Need and purpose of the taking of a statement:

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(c) Name of person(s) from whom the statement is to be obtained:

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*[insert details of the persons from which the statement will be taken to enable the requested authority to begin the summoning process where applicable]*

(d) Detailed description of the information sought, including a preliminary list of questions (if available at the time of the request).

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(e) Any additional information which may be useful:

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*[Whether the requesting authority's staff is requesting participation in the taking of the statement, details of the participating officials of the requesting authority, where appropriate, description of any legal and procedural requirements that must be complied with to ensure the admissibility of statements made in the interview in the jurisdiction of the requesting's authority]*

**On-site verification or investigation**

If the request concerns an on-site verification or investigation on behalf of the requesting authority, please provide information to enable the requested authority to assess whether it may have an interest in entering into a joint investigation, including the requesting authority's proposal for the verification or investigation, its reasoning and the benefits to the requested authority.

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*[including all relevant information required by the requested authority to enable the latter to provide the necessary assistance, as appropriate]*

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*[Insert any necessary confidentiality warnings or any necessary restrictions on the permissible uses of information (in compliance with Union law)].*

Yours sincerely,

[signature]

## ANNEX II

**Form for the acknowledgement of receipt**

## Acknowledgement of receipt

Reference number:

Date:

FROM:

Member State:

Requested Authority:

Address:

(Contact details of the contact point)

Name:

Telephone:

Email:

TO:

Member State:

Requesting Authority:

Legal address:

(Contact details of the contact point)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

Following your request *[insert reference to request]* we hereby acknowledge receipt of your request for cooperation or request for information on *[insert date]*.

Estimated date of response: .....

Yours sincerely,

*[signature]*

ANNEX III

**Form for the reply to a request for cooperation or exchange of information**

Reply to a request for cooperation or exchange of information

Reference number:

Date:

**General information**

FROM:

Member State:

Requested Authority:

Legal address:

(Contact details of the contact point)

Name:

Telephone:

Email:

TO:

Member State:

Requesting Authority:

Legal address:

(Contact details of the contact point)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

We confirm that your request dated *[dd.mm.yyyy]* with reference *[insert request reference number]* has been processed by us.

**Information gathered**

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*[If the information has been gathered, please set out the information here or provide an explanation of how it will be provided]*

The information provided is confidential and is disclosed to *[insert name of the requesting authority]* pursuant to the *[insert provision of MiFID II]* and on the basis that the information shall remain confidential in accordance with *[insert provision of MiFID II]*.

The *[insert name of the requesting authority]* shall observe the requirements of the *[insert provision of MiFID II]* with respect to confidentiality restrictions and the permissible uses of that information.

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*[Insert any other necessary confidentiality warnings or any necessary restrictions on the permissible uses of information (in compliance with Union law).*

Where relevant, please explain any clarification you may require in relation to the precise information requested:

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Please provide, on your own initiative, any essential information that could further assist the cooperation or exchange of information for the purposes of the request:

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Yours sincerely,

*[signature]*

ANNEX IV

**Form for the notification for directly addressing a remote member or participant of a regulated market**

Notification for directly addressing to a remote member or participant of a regulated market

Reference number:  
Date:

FROM:  
Member State:  
Authority of Regulated Market:  
Legal address:

(Contact details of the contact point)  
Name:  
Telephone:  
Email:

TO:  
Member State:  
Authority of remote member or participant of regulated market:  
Legal address:

(Contact details of the contact point)  
Name:  
Telephone:  
Email:

Dear *[insert appropriate name]*

I am notifying you of a direct approach I have just made to a remote member or participant of a regulated market for which we are the home competent authority. Below are the details of the regulated market and the remote member or participant and the reasons why they are being approached.

Name of Regulated Market:

Name of remote member or participant:

*Contact details of the person at the remote member or participant who is being addressed:*  
*Name:*  
*Telephone:*  
*Email:*

*Reasons for the approach to the remote member or participant*

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